IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.4649 OF 1999

Shri Shivaji Vishnu Jambe & Ors. ..Petitioners
Vs.
State of Maharashtra & Ors. ..Respondents

Mr.Anil V. Anturkar for Petitioners
The A.G.P. for Respondents

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 5TH APRIL, 2005.

P.C.

1. The Petitioners are working as primary teachers in various Ashram Schools as mentioned in Annexure-I. All the Petitioners hold qualifications such as B.A.B.Ed. (physical) B.A. B.P.Ed. etc. Respondent No.3 District Social Welfare Officer, Pune by his letter dated 27th July, 1999 intimated Principals/Head Masters of the Ashram Schools that as the Petitioners are not holding qualification of S.S.C./H.S.C., D.Ed. they are disqualified and the grant for payment of their salaries has not been sanctioned. The Petitioners contend that their services were continued by the Respondent No.3, they are possessing higher qualifications, therefore, the course adopted by Respondent No.3 is not justified. The decision to terminate their services is also illegal in view of the Government Resolutions providing that the Petitioners can acquire requisite qualification during the period of eight years. On

these grounds the Petitioners have filed the present Petition for setting aside the impugned order.

2. This Court while admitting Petition on 23rd August, 1999 stayed the effect and operation of the order dated 27th July, 1999 by way of interim relief.

3. The Respondent No.3 has filed affidavit in reply of Shri Laxmikant Balwant Mahajan, District Social Welfare Officer. It is the case of Respondent No.3 that the Petitioners do not possess requisite qualification of D.Ed. Their services are governed by The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. As they have not fulfilled the criteria as prescribed by the said Rules, grant for payment of their salary can not be sanctioned. Respondent No.3 has also pointed out that temporary approval was given for continuation of Petitioner Nos.2,3,4,5,6,7 & 8 against the reserved post as suitable candidates were not available. However, this does not confer any right on the said teachers. Not only that Petitioner Nos.2 to 8 are appointed against reserved post and Petitioner No.9 may become surplus if he acquires D.Ed. qualification. Thus, Respondents contend that having regard to all these facts Petition deserves to be dismissed.

4. When the matter came up for hearing learned Counsel for the Petitioner submitted that the Petitioners have not contacted him and therefore, he is not aware of the present factual position.

5. The contention that he Petitioners are possessing higher qualification therefore, impugned order dated 16th July, 1999 is illegal cannot be sustained, in view of the Full Bench Judgment of this Court reported in **2000(3) Maharashtra Law Journal, 605 in the matter of Jayashree Sunil Chavan Vs. State of Maharashtra and others.** However, we do not propose to go into the issues raised considering the order to be passed. If the Petitioners have by now acquired requisite qualification and are continued in the employment, their services be protected. In other words their services will not be terminated if they are eligible for being continued in service. In the event they have not acquired the qualifications it is open to the Respondents to take steps to give effect to the earlier directions as contained in letter dated 27th July, 1999. If the Petitioners were in service and have worked the salary paid to them shall not be recovered.

. Rule made partly absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)